

EDWARD H. KUBO, JR. #2499
United States Attorney
District of Hawaii

LESLIE E. OSBORNE, JR. #3740
Assistant U.S. Attorney
PJKK Federal Building
300 Ala Moana Boulevard, Rm. 6-100
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
E-mail: les.osborne@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

| | | |
|---------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, |) | CR. NO. 02-00225DAE (01) |
| |) | |
| Plaintiff, |) | GOVERNMENT'S SUPPLEMENTARY |
| |) | OPPOSITION TO DEFENDANT |
| vs. |) | YIP'S MOTION FOR JUDGMENT |
| |) | NOTWITHSTANDING THE |
| ANDY S.S. YIP, |) | VERDICT AS TO COUNT 1; |
| |) | EXHIBITS 1 - 12; |
| |) | CERTIFICATE OF SERVICE |
| Defendant. |) | |
| |) | |

GOVERNMENT'S SUPPLEMENTARY OPPOSITION
TO DEFENDANT YIP'S MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT AS TO COUNT 1

I. INTRODUCTION

The United States hereby supplements its original opposition filed on October 17, 2007. This supplementary pleading was necessitated by the fact that the trial transcripts set forth here were not available to the government until late Thursday, October 25, 2007.

II. THE DMITROVSKY TESTIMONY

The testimony of Eriko Dmitrovsky establishes the formation of the conspiracy between herself, the Defendant Yip and others. Relevant portions of that transcript are set forth here as Exhibit 1.

Dmitrovsky tells us how the conspiracy was formed at the Halekulani Hotel. (Exhibit 1, pages 8-10). She met with the Defendant Yip, his girlfriend Brenda Chung, and an unknown man. During that meeting, it was decided that Ms. Dmitrovsky would write the Internal Revenue Service (IRS) and tell them she had loaned Defendant Yip \$350,000. (Exhibit 1, page 5 and Exhibit 4). During that meeting, she was told who she should write to at the IRS. (Exhibit 1, page 10). Dmitrovsky recalled she might have faxed a copy of Exhibit 4 to Yip and/or Chung. (Exhibit 1, page 7). Subsequent to writing the letter, Ms. Dmitrovsky was contacted by IRS Agent Liburd and continued to assert that she had loaned money to Mr. Yip even though it did not appear Liburd believed her. (Exhibit 1, pages 10-11).

We know from Dmitrovsky's testimony that she became involved with the Yip conspiracy to deceive the IRS, when she was contacted by Brenda Chung and told Chung's boyfriend Yip had a "small tax problem." (Exhibit 1, page 2, lines 11-12). We also know that Ms. Dmitrovsky never loaned Defendant Yip any money and the promissory notes presented to the IRS by Yip's agent were

fraudulent. (Exhibit 1, pages 3-4).

Dmitrovsky said she was only an acquaintance of the Defendant Yip but in 1998, during the period at issue in this indictment, she received an 18K gold Ballerina black pearl ring with Marquis diamonds from Mr. Yip. (Exhibit 3, pages 2-4).

Agent Liburd testified that some time after talking to both the Defendant Yip and his CPA, she was provided a business card for Dmitrovsky and copies of four promissory notes. (Exhibit 2, pages 3-4 and Exhibits 5-6). Yip provided a fifth note on September 23, 1998. (Exhibit 7).

Liburd contacted Dmitrovsky who told the agent she had loaned \$350,000 to Yip in one lump sum. (Exhibit 2, pages 4-5, lines 23-25). Shortly after, Liburd received the letter confirming the \$350,000 loan. (Exhibit 4). Liburd does not recall asking for that letter. (Exhibit 2, page 4, lines 7-8). Liburd realized there was a conflict in Dmitrovsky's oral statement concerning a one lump sum payment and Dmitrovsky's later claim of multiple payments. The payments were supposedly distribution of money Dmitrovsky gave her friends to give to Yip. (Exhibit 2, page 8 and Exhibit 12).¹

Liburd was also informed by the Defendant Yip's accountant that Yip had received numerous loans from various

¹ It is interesting to note that the numerous friends story was told by two other people who allegedly loaned Yip money. (Chung and Boaz).

people including Dmitrovsky. (Exhibit 2, page 9 and Exhibit 8). Liburd noted a column marked "Foreign Exchange."

According to Liburd, Yip's loan stories, all of which appeared to be false, began to fall apart when she noted the column "Foreign Exchange" that appeared on his financial analysis of his various accounts. Even though she was told by Yip's accountant that those monies were loans, it became clear that they were HFE deposits coming from the Defendant's off-the-books business. (Exhibit 2, pages 10-17). Dmitrovsky's name appears on the Foreign Exchange column, along with Andy Chung. (Exhibits 8-11). Finally, the Defendant's accountant was told of four separate individuals who purportedly loaned Yip money. (Exhibit 2, page 17, lines 21-25). The evidence was clear that all four individuals were Defendant Yip's co-conspirators.

III. CONCLUSION

Based on all of the evidence in this case, there can be no doubt that a conspiracy between Yip and Dmitrovsky was formed at the Halekulani Hotel meeting in July, 1998. Dmitrovsky gave Yip permission to tell the IRS she had loaned him \$350,000. As alleged in the indictment, Dmitrovsky, in an effort to assist Yip, persisted with her false loan story on September 18, 1998 and, ultimately, Dmitrovsky received a valuable piece of jewelry from the Defendant Yip, which appears on the evidence in this case to have been a payment for her participation in the Yip

conspiracy.

DATED: Honolulu, Hawaii, October 26, 2007.

Respectfully submitted,

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By /s/ Rachel S. Moriyama (for)
LESLIE E. OSBORNE, JR.
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at the last known address:

Served Electronically through CM/ECF:

Howard T. Chang howardchang.crimtaxatty@hawaiiantel.net

DATED: Honolulu, Hawaii, October 26, 2007.

/s/ Gloria Parker